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July 19, 2024

Via CM/ECF

The Honorable Margaret M. Garnett
United States District Court for the Southern District of New York
40 Foley Square, Room 2102
New York, NY 10007

Re: *fuboTV Inc., et al. v. The Walt Disney Company, et al.*, No. 24-cv-1363

Dear Judge Garnett:

Plaintiffs fuboTV Inc. and fuboTV Media Inc. respectfully propose that the parties provide deposition designations to the Court for its review outside of the upcoming four-day preliminary injunction hearing, rather than using trial time to play deposition videos. This procedure will streamline the hearing and provide more time for live testimony, which is especially important in the context of an evidentiary hearing where the Court will assess witness credibility and decide disputed issues of fact. The parties have met and conferred and Defendants have informed Fubo that they oppose this request.

The Court has scheduled a four-day evidentiary hearing on Fubo's motion for preliminary injunction, which begins on August 6, 2024. Collectively, the parties currently intend to call between 17-21 live witnesses at this hearing. The parties also intend to submit deposition designations from a total of eight witnesses, with a total runtime of roughly 2 hours and 20 minutes (not including counter-designations, which the parties have not yet completed).¹

Fubo respectfully submits that it would be most efficient for the Court to review the deposition videos outside of Court, at the Court's convenience, and reserve valuable hearing time for live witnesses. Playing deposition video in the courtroom can be necessary in jury trials so that the Court and counsel can monitor the presentation of video testimony to the jury. But there is no such need in a bench trial. Instead, playing video testimony in court will duplicate work,

¹ Fubo may also submit deposition designations for one additional witness (Disney EVP Justin Warbrooke), if Fubo cannot secure Mr. Warbrooke's live testimony at the hearing. Fubo has also reserved the right to designate deposition testimony from witnesses on Defendants' live witness list if those witnesses do not ultimately appear.

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

The Honorable Margaret M. Garnett
July 19, 2024
Page 2

because the Court will need to independently review the parties' designations to rule on objections in any event.

It therefore makes eminent sense in a bench hearing for the Court to review deposition designations outside of Court, on its own schedule, and focus the hearing time on live witnesses and argument. For this reason, numerous courts have adopted this procedure in prior bench hearings.² That procedure is all the more appropriate here given the four-day hearing time and the number of live witnesses scheduled to testify.

² See, e.g., *Dual-Temp of Ill., Inc. v. Hench Control Corp.*, 2014 WL 4912723, at *1 (N.D. Ill. Sept. 30, 2014) ("Following the bench trial, each party submitted deposition designations and filed post-trial briefs with proposed findings of facts and conclusions of law."); *Bad River Band of Lake Superior Tribe of Chippewa Indians of Bad River Rsrv. v. Enbridge Energy Co.*, 2022 WL 17249085, at *1 (W.D. Wis. Nov. 28, 2022) ("After reviewing relevant expert reports, deposition designations and other voluminous, additional written submissions by the parties, the court held a trial to the bench . . . on October 24, 25 and 26, 2022"); *Seagen Inc. v. Daiichi Sankyo Co.*, 2022 WL 2789901, at *2 (E.D. Tex. July 15, 2022) (similar).

KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.

The Honorable Margaret M. Garnett
July 19, 2024
Page 3

Respectfully submitted,

/s/ Thomas G. Schultz

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Cc: All Counsel of Record (via CM/ECF)